

HELPFUL TIPS FOR FILING
A SUMMARY JUDGMENT MOTION
IN CASES ASSIGNED TO JUDGE BARBARA B. CRABB

Please read the attached directions carefully – doing so will save your time and the court’s.

REMEMBER:

1. All facts necessary to sustain a party’s position on a motion for summary judgment must be explicitly proposed as findings of fact. This includes facts establishing jurisdiction. (Think of your proposed findings of fact as telling a story to someone who knows nothing of the controversy.)

2. The court will not search the record for factual evidence. Even if there is evidence in the record to support your position on summary judgment, if you do not propose a finding of fact with the proper citation, the court will not consider that evidence when deciding the motion.

3. A fact properly proposed by one side will be accepted by the court as undisputed unless the other side properly responds to the proposed fact and establishes that it is in dispute.

4. Your brief is the place to make your legal argument, not to restate the facts. When you finish it, check it over with a fine tooth comb to be sure you haven’t relied upon or assumed any facts in making your legal argument that you failed to include in the separate document setting out your proposed findings of fact.

5. A chart listing the documents to be filed by the deadlines set by the court for briefing motions for summary judgment or cross-motions for summary judgment is printed on the reverse side of this tip sheet.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

PROCEDURE TO BE FOLLOWED ON MOTIONS FOR SUMMARY JUDGMENT

I. MOTION FOR SUMMARY JUDGMENT

A. Contents:

1. A motion, together with such materials permitted by Rule 56(e) as the movant may elect to serve and file; and
2. In a separate document, a statement of proposed findings of fact or a stipulation of fact between or among the parties to the action, or both; and
3. Evidentiary materials (see I.C.); and
4. A supporting brief.

B. Rules Regarding Proposed Findings of Fact:

1. Each fact should be proposed in a separate, numbered paragraph.
2. Each factual proposition must be followed by a reference to evidence supporting the proposed fact. For example,

“1. Plaintiff Smith bought six Holstein calves on July 11, 2001.
Harold Smith Affidavit, Jan. 6, 2002, p.1, ¶ 3.”

3. The statement of proposed findings of fact shall include ALL factual propositions the moving party considers necessary for judgment in the party's favor. For example, the proposed findings shall include factual statements relating to jurisdiction, the identity of the parties, the dispute, and the context of the dispute.
4. The court will not consider facts contained only in a brief.

C. Evidence

1. As noted in I.B. above, each proposed finding must be supported by admissible evidence. The court will not search the record for evidence. To support a proposed fact, you may use:

- a. Depositions. Give the name of the witness, the date of the deposition, and page of the transcript of cited deposition testimony;
- b. Answers to Interrogatories. State the number of the interrogatory and the party answering it;
- c. Admissions made pursuant to Fed. R. Civ. P. 36. (state the number of the requested admission and the identity of the parties to whom it was directed); or
- d. Other Admissions. The identity of the document, the number of the page, and paragraph of the document in which that admission is made.
- e. Affidavits. The page and paragraph number, the name of the affiant, and the date of the affidavit. (Affidavits must be made by persons who have first hand knowledge and must show that the person making the affidavit is in a position to testify about those facts.)
- f. Documentary evidence that is shown to be true and correct, either by an affidavit or by stipulation of the parties. (State exhibit number, page and paragraph.)

II. RESPONSE TO MOTION FOR SUMMARY JUDGMENT

A. Contents:

1. A response to the movant's proposed finding of fact; and
2. A brief in opposition to the motion for summary judgment; and
3. Evidentiary materials (See I.C.)

B. In addition to responding to the movant's proposed facts, a non-movant may propose its own findings of fact following the procedure in section I.B. and C. above.

C. Unless the party opposing the motion puts into dispute a fact proposed by the moving party, the court will conclude that the fact is undisputed.

D. Rules Regarding Responses to the Movant's Proposed Factual Statements:

1. Answer each numbered fact proposed by the moving party in separate paragraphs, using the same number.

2. If you dispute a proposed fact, state your version of the fact and refer to evidence that supports that version. For example,

Movant proposes as a fact:

“1. Plaintiff Smith purchased six Holstein calves from Dell’s Dairy Farm on July 11, 2001. Harold Smith Affidavit, Jan. 6, 2002, p.1, ¶ 3.”

Non-Movant responds:

“1. Dispute. The purchase Smith made from Dell’s Dairy Farm on July 11, 2001 was for one Black Angus bull.” John Dell Affidavit, Feb. 1, 2002, Exh. A.”

E. Evidence

1. Each fact proposed in disputing a movant’s proposed factual statement and all additional facts proposed by the non-moving party must be supported by admissible evidence. The court will not search the record for evidence. To support a proposed fact, you may use evidence as described in Procedure I.C.1. a. through f.
2. The court will not consider any factual propositions made in response to the movant’s proposed facts that are not supported properly and sufficiently by admissible evidence.

III. REPLY

A. Contents:

1. An answer to each numbered factual statement made by the non-moving party, together with references to evidentiary materials; and
2. A reply brief; and
3. Evidentiary materials (see I.C.)

DEFENDANT MOVES FOR SUMMARY JUDGMENT

Deadline 1	Deadline 2	Deadline 3
defendant's motion		
defendant's brief	plaintiff's response brief	defendant's reply brief
defendant's proposed findings of fact	plaintiff's response to defendant's proposed findings of fact	defendant's reply to plaintiff's response to defendant's proposed findings of fact
	plaintiff's proposed findings of fact (if necessary to supplement defendant's proposed findings of fact)	defendant's response to plaintiff's proposed findings of fact

DEFENDANT AND PLAINTIFF MOVE FOR SUMMARY JUDGMENT

Deadline 1	Deadline 2	Deadline 3
defendant's motion		
defendant's brief	plaintiff's response brief	defendant's reply brief
defendant's proposed findings of fact	plaintiff's response to defendant's proposed findings of fact	defendant's reply to plaintiff's response to defendant's proposed findings of fact
plaintiff's motion		
plaintiff's brief	defendant's response brief	plaintiff's reply brief
plaintiff's proposed findings of fact	defendant's response to plaintiff's proposed findings of fact	plaintiff's reply to defendant's response to plaintiff's proposed findings of fact